Supreme Court, U.S.
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No.

Supreme Court of the United States

DR. NABIL GHALI,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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56 pp

QUESTIONS PRESENTED FOR REVIEW

1.) Where the same attorney who represented a criminal defendant at his guilty plea proceedings and sentencing represents the defendant in a motion to withdraw his plea, but omits a claim of ineffective assistance of counsel as grounds for withdrawal of the plea, has the defendant been denied his Sixth Amendment constitutional right to counsel free of an actual conflict of interest?

2.) Where a criminal defendant has pleaded guilty in a complicated tax case, with relevant conduct extending over a 4 year time span, has a District Court violated U.S.S.G. § 3C1.1 by imposing an "obstruction of justice" enhancement based on the fact that the evidence submitted in mitigation of the sentence was voluminous and confusing?

PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

The caption of the case in this Court contains the names of all parties to the proceedings in the United States Court of Appeals for the Sixth Circuit.

More specifically, the Petitioner Dr. Nabil Ghali and the Respondent United States of America are the only parties. Neither party is a company, corporation, or subsidiary of any company or corporation.

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OPINIONS BELOW

Dr. Nabil Ghali, the Petitioner herein, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above entitled case on 9-10-02.

The 9-10-02 opinion of the Court of Appeals for the Sixth Circuit, whose judgment is herein sought to be reviewed, is an unpublished decision reported at 2002 U.S. App. LEXIS 18719; 90 A.F.T.R.2d (RIA) 6346, and is reprinted in the separate Appendix A to this Petition.

The prior opinion and judgment (Judgment & Commitment Order) of the United States District Court for the Northern District Of Ohio, entered on 3-9-01, is an unpublished decision, and is reprinted in the separate Appendix B to this Petition.

The prior opinion and judgment of the United States District Court for the Northern District Of Ohio denying Dr. Ghali's motion to withdraw guilty plea on 4-5-01, is an unpublished marginal order on the motion, and is reprinted in the separate Appendix C to this Petition.

The docket sheets for the United States District Court for the Northern District Of Ohio are reprinted in the separate Appendix D to this Petition.

The docket sheets for the United States Court of Appeals for the Sixth Circuit are reprinted in the separate Appendix E to this Petition.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on 9-10-02. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, RULES AND REGULATIONS INVOLVED

The Sixth Amendment to the Constitution of the United States provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense. *Id.*

26 U.S.C. § 7206 provides in relevant part:

> § 7206. Fraud and false statements.
>
> Any person who--
>
> (1) Declaration under penalties of perjury. Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or
>
> (2) Aid or assistance. Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized

or required to present such return, affidavit, claim, or document; or

(3) Fraudulent bonds, permits, and entries. Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal revenue laws, or by any regulation made in pursuance thereof, or procures the same to be falsely or fraudulently executed, or advises, aids in, or connives at such execution thereof; or

(4) Removal or concealment with intent to defraud. Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by section 6331, with intent to evade or defeat the assessment or collection of any tax imposed by this title; or

(5) Compromises and closing agreements. In connection with any compromise under section 7122, or offer of such compromise, or in connection with any closing agreement under section 7121, or offer to enter into any such agreement, willfully--

(A) Concealment of property. Conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or

(B) Withholding, falsifying, and destroying records. Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial

condition of the taxpayer or other person liable in respect of the tax;

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $ 100,000 ($ 500,000 in the case of a corporation), or imprisoned not more than 3 years, or both, together with the costs of prosecution.

28 U.S.C. § 1746 provides:

Sec. 1746. Unsworn declarations under penalty of perjury -

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

Pub. L. 94-550, Sec. 1(a), Oct. 18, 1976, 90 Stat. 2534. *Id.*

U.S.S.G. § 1B1.3 provides in relevant part:

§ 1B1.3. Relevant Conduct (Factors that Determine the Guideline Range)

(a) Chapters Two (Offense Conduct) and Three (Adjustments). Unless otherwise specified, (i) the base offense level where the guideline specifies more than one base offense level, (ii) specific offense characteristics and (iii) cross references in Chapter Two, and (iv) adjustments in Chapter Three, shall be determined on the basis of the following:

(1) (A) all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant; and

(B) in the case of a jointly undertaken criminal activity (a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy), all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity,

that occurred during the commission of the offense of conviction, in preparation for that

offense, or in the course of attempting to avoid detection or responsibility for that offense;

(2) solely with respect to offenses of a character for which § 3D1.2(d) would require grouping of multiple counts, all acts and omissions described in subdivisions (1)(A) and (1)(B) above that were part of the same course of conduct or common scheme or plan as the offense of conviction;

(3) all harm that resulted from the acts and omissions specified in subsections (a)(1) and (a)(2) above, and all harm that was the object of such acts and omissions; and

(4) any other information specified in the applicable guideline.

(b) Chapters Four (Criminal History and Criminal Livelihood) and Five (Determining the Sentence). Factors in Chapters Four and Five that establish the guideline range shall be determined on the basis of the conduct and information specified in the respective guidelines.

U.S.S.G. § 2T1.1 provides in relevant part:

§2T1.1. Tax Evasion; Willful Failure to File Return, Supply Information, or Pay Tax; Fraudulent or False Returns, Statements, or Other Documents

(a) Base Offense Level:

(1) Level from §2T4.1 (Tax Table) corresponding to the tax loss; or

(2) 6, if there is no tax loss.

(b) Specific Offense Characteristics

(1) If the defendant failed to report or to correctly identify the source of income exceeding $10,000 in any year from criminal

activity, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(2) If the offense involved sophisticated concealment, increase by 2 levels.

(c) Special Instructions

For the purposes of this guideline --

(1) If the offense involved tax evasion or a fraudulent or false return, statement, or other document, the tax loss is the total amount of loss that was the object of the offense (i.e., the loss that would have resulted had the offense been successfully completed).

Notes:

(A) If the offense involved filing a tax return in which gross income was underreported, the tax loss shall be treated as equal to 28% of the unreported gross income (34% if the taxpayer is a corporation) plus 100% of any false credits claimed against tax, unless a more accurate determination of the tax loss can be made.

(B) If the offense involved improperly claiming a deduction or an exemption, the tax loss shall be treated as equal to 28% of the amount of the improperly claimed deduction or exemption (34% if the taxpayer is a corporation) plus 100% of any false credits claimed against tax, unless a more accurate determination of the tax loss can be made.

(C) If the offense involved improperly claiming a deduction to provide a basis for tax evasion in the future, the tax loss shall be treated as equal to 28% of the amount of the improperly claimed deduction (34% if the taxpayer is a corporation) plus 100% of any false credits claimed against tax, unless a

more accurate determination of the tax loss can be made.

(2) If the offense involved failure to file a tax return, the tax loss is the amount of tax that the taxpayer owed and did not pay.

Note: If the offense involved failure to file a tax return, the tax loss shall be treated as equal to 20% of the gross income (25% if the taxpayer is a corporation) less any tax withheld or otherwise paid, unless a more accurate determination of the tax loss can be made.

(3) If the offense involved willful failure to pay tax, the tax loss is the amount of tax that the taxpayer owed and did not pay.

(4) If the offense involved improperly claiming a refund to which the claimant was not entitled, the tax loss is the amount of the claimed refund to which the claimant was not entitled.

(5) The tax loss is not reduced by any payment of the tax subsequent to the commission of the offense.

Id. (As amended effective November 1, 1998)

U.S.S.G. § 2T4.1 provides in relevant part:

§2T4.1. Tax Table

Tax Loss (Apply the Greatest)	Offense Level
(A) $1,700 or less	6
(B) More than $1,700	7
(C) More than $3,000	8
(D) More than $5,000	9
(E) More than $8,000	10
(F) More than $13,500	11
(G) More than $23,500	12
(H) More than $40,000	13
(I) More than $70,000	14

(J) More than $120,000 15
(K) More than $200,000 16
(L) More than $325,000 17
(M) More than $550,000 18
(N) More than $950,000 19
(O) More than $1,500,000 20
(P) More than $2,500,000 21
(Q) More than $5,000,000 22
(R) More than $10,000,000 23
(S) More than $20,000,000 24
(T) More than $40,000,000 25
(U) More than $80,000,000 26
Id. (As amended effective November 1, 1993)

U.S.S.G. § 3C1.1 provides in relevant part:

§3C1.1. Obstructing or Impeding the Administration of Justice

If (A) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice during the course of the investigation, prosecution, or sentencing of the instant offense of conviction, and (B) the obstructive conduct related to (i) the defendant's offense of conviction and any relevant conduct; or (ii) a closely related offense, increase the offense level by 2 levels... *Id.* (As amended effective November 1, 1998).

U.S.S.G. § 3E1.1 provides in relevant part:

§3E1.1. Acceptance of Responsibility

(a) If the defendant clearly demonstrates acceptance of responsibility for his offense, decrease the offense level by 2 levels.

(b) If the defendant qualifies for a decrease under subsection (a), the offense level determined prior to the operation of

subsection (a) is level 16 or greater, and the defendant has assisted authorities in the investigation or prosecution of his own misconduct by taking one or more of the following steps:

(1) timely providing complete information to the government concerning his own involvement in the offense; or

(2) timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the court to allocate its resources efficiently,

decrease the offense level by 1 additional level. *Id.* (As amended effective November 1, 1992).

Fed. R. Crim. P. 52(b)provides:

Rule 52. Harmless Error and Plain Error.

(a) Harmless error. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) Plain error. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court. *Id.* (As amended Dec. 26, 1944, eff. March 21, 1946.)

STATEMENT OF THE CASE

On 2-23-00, Dr. Ghali was charged in an indictment with violation of 26 U.S.C. § 7206(1) (filing a false income tax return for the calendar year 1993) (Count 1); 26 U.S.C. § 7206(1) (filing a false income tax return for the calendar year 1994) (Count 2); 26 U.S.C. § 7206(1) (filing a false income tax return for the calendar year 1995) (Count 3); 26 U.S.C. § 7206(1) (filing a false income tax return for the calendar year 1996) (Count 4).

As a successful medical practitioner, Dr. Ghali's tax records for the four years in question were voluminous.[1]

On 10-5-00, Dr. Ghali entered into a plea agreement with the government whereby he would plead guilty to Count 2 of the indictment. The plea agreement reserved Dr. Ghali's right to argue at sentencing for a lower tax loss to the government and, therefore, a lower guideline sentencing range under the "relevant conduct" provision of the United States Sentencing Guidelines, U.S.S.G. § 1B1.3.

On 10-16-00, Dr. Ghali pleaded guilty to Count 2 in proceedings held before a Magistrate Judge. This plea and plea agreement was accepted by the District Court on 11-14-00.

Subsequent to his plea and prior to sentencing, counsel for Dr. Ghali submitted sentencing memorandums on two occasions; 2-14-01 and 3-6-01. (Appendix, Exhibit D5) These memorandums included a "3 inches thick" notebook[2] and 17 pages of financial data demonstrating that, while the tax returns were incomplete, there had been no actual revenue loss to the government.

On 3-8-01, Dr. Ghali appeared for sentencing. At the hearing, counsel submitted a 54 page supplement to the sentencing memorandums previously filed. This supplement, contained further financial data demonstrating that, while the

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[1] See Court of Appeals Joint Appendix.

[2] Transcript of sentencing, 3-8-01, page 36.

tax returns were incomplete, there had been no actual revenue loss to the government. (Appendix, Exhibit D5)

The District Court, clearly irritated with the volume and confusing nature of the extensive financial data, imposed a 2 levels enhancement for "obstruction of justice" under U.S.S.G. § 3C1.1, stating,

> This case has had the most convoluted sort of scenario attached to it from the beginning, and it continues. The idea that after a continued sentencing, with all of the time that you've had, you would then produce to the Court an unfiled series of changes, that we would have the kind of testimony that we've had in this hearing today, means to me that it was more than just leading people on a merry chase. There was a clear effort here to make it well nigh impossible for anyone to be able to interpret what happened, so I'm going to add two points for the obstruction of justice.[3]

As a result of the District Court's imposition of the obstruction of justice enhancement, the court then declined to grant Dr. Ghali a downward adjustment under U.S.S.G. § 3E1.1 for acceptance of responsibility and sentenced him to serve 27 months incarceration plus 1 year of supervised release, a $10,000.00 fine and $50.00 assessment. (Appendix, Exhibits B).

On 3-26-01, the same counsel who had represented Dr. Ghali during plea negotiations and the change of plea proceedings moved to withdraw Dr. Ghali's plea of guilty. (Appendix, Exhibit D7) While the motion raised numerous issues relating to the fact that the sentence of Dr. Ghali was not the one contemplated by the plea, the motion omitted any reference to "ineffective assistance of counsel" in the plea negotiation or sentencing. *Id.*

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[3] Transcript of sentencing, 3-8-01, page 161.

On 4-5-01, the District Court, in a marginal order, denied the motion without further comment and without any inquiry whether counsel's representation for the motion to withdraw the plea had presented an actual conflict of interest.

On direct appeal, counsel for Dr. Ghali challenged the enhancement for obstruction of justice, the denial of the downward adjustment for acceptance of responsibility and the denial of the motion to withdraw his plea of guilty.

The Court of Appeals affirmed the enhancement for obstruction of justice in part on the grounds that the evidence was voluminous and confusing. *United States v. Ghali,* 2002 U.S. App. LEXIS 18719 *5 (6th Cir. 9-10-02)

The Court of Appeals affirmed the denial of the downward adjustment for acceptance of responsibility on the grounds that this was the normal practice when an obstruction of justice enhancement is imposed. *United States v. Ghali,* 2002 U.S. App. LEXIS 18719 *6 (6th Cir. 9-10-02)

Finally, the Court of Appeals affirmed the denial of the motion to withdraw the guilty plea. In affirming the denial, the Court of Appeals did not address the issue whether the District Court should have made an inquiry as to whether an actual conflict of interest existed in counsel's representation of Dr. Ghali during the motion to withdraw the guilty plea.

Dr. Ghali demonstrates within that this Court should grant his Petition For Writ Of Certiorari because the court of appeals for the Sixth Circuit has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

REASONS FOR GRANTING THE WRIT

1.) **THIS COURT SHOULD GRANT DR. GHALI'S PETITION FOR WRIT OF CERTIORARI BECAUSE THE COURT OF APPEALS FOR THE SIXTH CIRCUIT HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION.**

Supreme Court Rule 10 provides in relevant part as follows:

> **Rule 10.**
> **CONSIDERATIONS GOVERNING REVIEW ON WRIT OF CERTIORARI**
>
> A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:
>
> **(a)** a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial

> proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision... *Id.* Supreme Court Rule 10(a).

This Court has never hesitated to exercise it's power of supervision where the lower courts have substantially departed from the accepted and usual course of judicial proceedings with resulting injustice to one of the parties. *McNabb v. United States*, 318 U.S. 332 (1943).[4] As the Court stated in *McNabb:*

> ... the scope of our reviewing power over convictions brought here from the federal courts is not confined to ascertainment of Constitutional validity. Judicial supervision of the administration of criminal justice in the federal courts implies the duty of establishing and maintaining civilized standards of procedure and evidence.

McNabb, 318 U.S. at 340.

1A.) The Lower Courts Departed From The Accepted And Usual Course Of Judicial Proceedings By Failing To Inquire Into An Actual Conflict Of Interest During Dr. Ghali's Proceedings For Withdrawal Of His Plea Of Guilty.

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[4] See also *GACA v. United States*, 411 U.S. 618 (1973); *United States v. Jacobs*, 429 U.S. 909 (1976); *Rea v. United States*, 350 U.S. 214 (1956); *Benanti v. United States*, 355 U.S. 96 (1957); *United States v. Behrens*, 375 U.S. 162 (1963); *Elkins v. United States*, 364 U.S. 206 (1960)..

Where a defendant is attempting to withdraw a guilty plea and a potential ground for withdrawal includes ineffective assistance of counsel in entering the plea, an actual conflict of interest exists if the same attorney that represented the defendant for the plea is forced to represent the defendant during the proceedings to withdraw the plea. *United States v. Davis*, 239 F.3d 283; 2001 U.S. App. LEXIS 1569 (2nd Cir. 2001); *Lopez v. Scully*, 58 F.3d 38, 41 (2nd Cir. 1995); *United States v. Ellison*, 798 F.2d 1102; 1986 U.S. App. LEXIS 28836 (7th Cir. 1986).

In Dr. Ghali's case, as set forth above, he was represented in the motion to withdraw his plea by the same attorney who represented him in negotiating the plea. One of the strongest grounds for withdrawal of the plea would have been a claim of ineffective assistance of counsel in negotiating the plea, by failing to ascertain that the plea limited the sentence to the sentence that Dr. Ghali was led to believe he was going to get. The only way, however, for counsel to raise this claim would have been to attack his own performance in the plea process, thereby opening himself to a claim of malpractice and discrediting his professional credentials. This was a classic conflict of interest. Moreover, it clearly adversely affected the performance of counsel in the motion to withdraw the plea because counsel chose to favor his own interest by declining to raise a claim of ineffective assistance of counsel.

Based on the foregoing, the lower courts departed from the accepted and usual course of judicial proceedings by failing to inquire into an actual conflict of interest during Dr. Ghali's proceedings for withdrawal of his plea of guilty.

1B.) The Lower Courts Departed From The Accepted And Usual Course Of Judicial Proceedings By Imposing And Affirming An "Obstruction Of Justice" Enhancement Based In Material Part On The Fact That The Evidence Submitted In Mitigation Of His Sentence Was Voluminous And Confusing.

As set forth above, the guideline for "obstruction of justice", U.S.S.G. § 3C1.1, provides in relevant part:

> **§ 3C1.1. Obstructing or Impeding the Administration of Justice**
>
> If (A) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice during the course of the investigation, prosecution, or sentencing of the instant offense of conviction, and (B) the obstructive conduct related to (i) the defendant's offense of conviction and any relevant conduct; or (ii) a closely related offense, increase the offense level by 2 levels. *Id.*

While submission of false documents with the willful intent to obstruct justice will support a enhancement for obstruction of justice, *United States v Pepper,* 51 F3d 469 (5th Cir. 1995), the simple submission of tax records with data alleged to be partially inaccurate by the government does not support the enhancement. *United States v. Parrott,* 148 F.3d 629; 1998 U.S. App. LEXIS 15001 (6th Cir. 1998).

In Dr. Ghali's case, as set forth above, the District Court imposed the obstruction of justice enhancement based in material part on the voluminous records and the difficulty in understanding them[5]. The Court of Appeals affirmed based

[5] Transcript of sentencing, 3-8-01, page 161.

in material part on the same reasoning. *United States v. Ghali*, 2002 U.S. App. LEXIS 18719 *5 (6th Cir. 9-10-02)

In actual fact, counsel has found no federal court decision, published or unpublished, where an obstruction of justice enhancement was imposed for the reason that the defendant introduced "voluminous evidence" or because tax records submitted were "confusing". That is, unfortunately, the case with most tax records. That's why there are tax accountants and tax attorneys; to help others who are not specialists in tax matters to understand taxes.

To penalize Dr. Ghali for submission of voluminous and confusing tax records is to penalize him for exercise of his Fifth Amendment constitutional right to Due Process of Law; a penalty specifically proscribed by Application Note 2 in the Commentary to U.S.S.G. § 3C1.1.

Based on the foregoing, the lower courts departed from the accepted and usual course of judicial proceedings by imposing and affirming an "obstruction of justice" enhancement based in material part on the fact that the evidence submitted in mitigation of Dr. Ghali's sentence was voluminous.

Based on the foregoing, the decision by the Court of Appeals for the Sixth Circuit has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.[6]

Based on all of the foregoing, this Court should grant certiorari and review the judgment of the Court of Appeals for the Sixth Circuit in Dr. Ghali's case.

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[6] *McNabb v. United States*, 318 U.S. 332 (1943); *GACA v. United States*, 411 U.S. 618 (1973); *United States v. Jacobs*, 429 U.S. 909 (1976); *Rea v. United States*, 350 U.S. 214 (1956); *Benanti v. United States*, 355 U.S. 96 (1957); *United States v. Behrens*, 375 U.S. 162 (1963); *Elkins v. United States*, 364 U.S. 206 (1960).

CONCLUSION

For all of the foregoing reasons, Petitioner Dr. Nabil Ghali respectfully prays that his Petition for Writ of Certiorari be **GRANTED** and the case set for argument on the merits.

Alternatively, Petitioner respectfully prays that this Court **GRANT** certiorari, **VACATE** the order affirming his direct appeal and **REMAND**[7] to the court of appeals for reconsideration in light of *Cuyler v. Sullivan*, 446 U.S. 335, 64 L.Ed.2d 333, 100 S.Ct. 1708 (1980).

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Date: _____

[7] For authority on "GVR" orders, see *Lawrence v. Chater*, 516 U.S. 163, 167-68, 133 L. Ed. 2d 545, 116 S. Ct. 604 (1996).

No.

Supreme Court of the United States

DR. NABIL GHALI,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

APPENDIX

COMES NOW PETITIONER Dr. Nabil Ghali and submits the attached appendix pursuant to Supreme Court Rules.

Brian C. Southwell
Attorney for Dr. Nabil Ghali
MN ID #103706
701 - 4th Ave. South, Suite 500
Minneapolis, MN 55415
(Phone: 612-337-9573)

Date:_____

APPENDIX A

ORDER & JUDGMENT OF THE COURT OF APPEALS FOR THE SIXTH CIRCUIT DATED 9-10-02

2002 U.S. App. LEXIS 18719, *; 90 A.F.T.R.2d (RIA) 6346

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

NABIL N. GHALI, Defendant-Appellant.

No. 01-3282

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

2002 U.S. App. LEXIS 18719; 90 A.F.T.R.2d (RIA) 6346

September 10, 2002, Filed

NOTICE: [*1] NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. SIXTH CIRCUIT RULE 28(g) LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 28(g) BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

PRIOR HISTORY: ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO. 00-00076. Wells. 03-16-01.

DISPOSITION: Affirmed.

COUNSEL: For UNITED STATES OF AMERICA, Plaintiff-Appellee: John D. Sammon, U.S. Attorney's Office, Cleveland, OH.

For NABIL N. GHALI, Defendant-Appellant: John Kennedy Lynch, Lynch & Lynch, Cleveland, OH.

JUDGES: BEFORE: NORRIS and BATCHELDER, Circuit Judges; FORESTER, District Judge. *

* The Honorable Karl S. Forester, United States District Judge for the Eastern District of Kentucky, sitting by designation.

OPINION: PER CURIAM. Defendant Dr. Nabil N. Ghali appeals the sentence entered after his plea of guilty to one count of filing false income tax returns, 26 U.S.C. §

7206(1). He also appeals the district court's refusal to permit him to withdraw his guilty plea after the sentencing hearing. [*2] Finding no error in the district court's sentencing determination and no abuse of discretion in its refusal to permit defendant to withdraw his plea, we affirm the judgment.

The government filed a four-count indictment against defendant on February 23, 2000, charging him with filing false corporate income tax returns for Academy Medical Center, Inc. ("the Center") for the years 1993 through 1996 in violation of 26 U.S.C. § 7206(1). The indictment alleged that defendant, who was president of the Center, failed to report income totaling more than $ 969,000 for those years resulting in additional tax liability of $ 270,000.

Defendant ultimately pleaded guilty to count two of the indictment pursuant to a written plea agreement. The agreement stated that the relevant Sentencing Guideline sections were U.S.S.G. §§ 2T1.1 and 2T4.1, which provide for a base offense level of 14 based on a tax loss of more than $ 70,000. Defendant, however, reserved the right to argue for a lower tax loss in the agreement. The agreement further provided that the government would recommend a two-level reduction for acceptance of responsibility under § 3E1.1(a) of the Guidelines provided [*3] defendant cooperated in the investigation.

Sentencing was originally scheduled for January 19, 2001, but the district court granted defendant's motion for a continuance. Several days prior to the rescheduled hearing defendant filed a presentencing memorandum in which he renewed his argument that there was no actual tax loss to the government because of significant unclaimed cash expenses incurred by the Center. Among other sources of these expenditures, defendant included the names of two additional doctors, Drs. Weinburg and Siner, who he claimed had been paid in cash for numerous procedures at the Center. Defendant provided patient records which he claimed documented the procedures performed by these doctors.

The government contacted the Ohio Medical Board and determined that no doctors with the names provided by defendant were licensed to practice in Ohio. The government also determined that all of the procedures defendant claimed were performed by these two doctors were actually performed by two other doctors at the Center. The government filed a sentencing memorandum in which it contended that defendant's presentation of falsified records constituted obstruction of justice warranting [*4] a two-level enhancement under U.S.S.G. § 3C1.1. In addition, the government argued that defendant's actions were inconsistent with acceptance of responsibility and, therefore, that the court should not apply the two-level downward adjustment under U.S.S.G. § 3E1.1.

After a lengthy sentencing hearing, the court accepted the government's arguments and sentenced defendant to a base level of 14 under U.S.S.G. § 2T4.1 with a two-level enhancement for obstruction of justice under U.S.S.G. § 3C1.1, resulting in a base offense level of 16. Pursuant to these guidelines, the court sentenced defendant to 27 months in prison followed by one year of supervised release.

Defendant then moved to withdraw his guilty plea arguing that the government breached its plea agreement. The court denied the motion. Defendant appeals both his sentence and the court's denial of his motion to withdraw his guilty plea.

We review a district court's application of U.S.S.G. § 3C1.1 for clear error. See *United States v. Jackson-Randolph*, 282 F.3d 369, 390 (2002). The court's decision whether to apply U.S.S.G. § 3E1.1 is a factual question which we also review for clear error. See *United States v. Mahaffey*, 53 F.3d 128, 134 (6th Cir. 1995). [*5]

Section 3C1.1 provides for the application of a two-level enhancement where "the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice during the course of the investigation, prosecution, or sentencing," and the obstructive

conduct related to the offense. As noted above, the government presented evidence during the sentencing hearing that defendant falsely claimed that two additional doctors performed procedures which in fact other doctors had performed. Defendant admitted those records were incorrect at the sentencing hearing but contended that the mistake was inadvertent.

After hearing this and other detailed testimony concerning the records, the district court concluded that the extensive records and multiple changes presented by defendant amounted to "a clear effort here to make it well nigh impossible for anyone to interpret what happened [in the records] ...," and applied § 3C1.1 as a result. We do not think that the court committed clear error in coming to the conclusion that defendant deliberately attempted to create confusion through his manipulation of the records.

With respect to the acceptance of responsibility [*6] question, the court concluded that, rather than accepting responsibility, defendant had produced "a long string of excuses for what happened," and, therefore, refused to apply the downward adjustment under § 3E1.1. As the government points out, a defendant who obstructs justice is entitled to a reduction for acceptance of responsibility only in extraordinary cases. U.S.S.G. § 3E1.1, comment (n.4); see also *Mahaffey*, 53 F.3d at 135. Defendant has presented no argument that there is anything extraordinary about this case at all, much less one sufficient to show that the court's decision not to apply this adjustment was clear error.

Defendant also argues that the district court abused its discretion in refusing to permit him to withdraw his guilty plea after the sentencing hearing. We review a district court's denial of a motion to withdraw a guilty plea under an abuse of discretion standard. *United States v. Alexander*, 948 F.2d 1002, 1003 (6th Cir. 1991). It is the defendant's burden to demonstrate that proper grounds exist for the granting of such

a motion. *United States v. Bazzi*, 94 F.3d 1025, 1027 (6th Cir. 1996).

We have set [*7] forth a series of factors to consider in determining whether the court's denial was an abuse of discretion. Id. All of the relevant factors in this case favor upholding the district court's denial of defendant's motion. Most significant in this respect are the fact that defendant waited until after the completion of his sentencing hearing to withdraw the plea despite notification by the government that it would argue for the enhancement prior to the hearing, and the fact that he does not contend that he is innocent of the underlying charge. Moreover, defendant has failed to demonstrate any valid reason to justify the withdrawal of his plea. Accordingly, we are unable to say the district court abused its discretion in denying plaintiff's motion.

The judgment of the district court is affirmed.

APPENDIX B

JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO ENTERED 3-9-01

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
Eastern Division
JUDGEMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)
UNITED STATES OF AMERICA,
v.
NABIL N. GHALI

Case Number: 1:00CR76-01
Counsel for Defendant: John Kennedy Lynch
Counsel for the United States: John D. Sammon, Asst. U.S. Atty.
Court Reporter: Bruce Matthews

THE DEFENDANT:
[x] pleaded guilty to count two of the indictment
[] pleaded nolo contendere to count(s)_____ which was accepted by the court.
[] was found guilty on count(s)_____ after a plea of not guilty.

Title & Section: Title 26 U.S.C. §7206(1)
Nature of Offense: Filing a False Corporate Tax Return
Date Offense Concluded: 02/03/1995
Count Number(s): 2
The defendant is sentenced as provided in pages 2 through 7 of this judgement. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.
[] The defendant has been found not guilty on count(s)_____
[x] Count(s) one, three and four are dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all

fines, restitution, costs, and special assessments imposed by this judgment are fully paid

Defendant's Social Security No.: 406-74-0228
Defendant's Date of Birth: 01/01/1934
Date of imposition of Judgement: March 8, 2001
Defendant's USM No.: 37542-060
Defendant's Residence Address: 1620 E. 79th Street, Cleveland, Ohio 44103
Defendant's Mailing Address: 1620 E. 79th Street, Cleveland, Ohio 44103

UNITED STATES DISTRICT JUDGE
Date

DEFENDANT: GHALI, NABIL N.
CASE NUMBER: 1:00CR76-01

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 27 month(s).

[x] The defendant shall surrender for service at the institution designated by the Bureau of Prisons:

[ ] before 2:00 p.m. on the date indicated as notified by the United States Marshal

[ ] by2 p.m. on _____

[x] as notified by the United States Marshal or the Federal Bureau of Prisons.

[ ] as notified by the Probation or Pretrial Services Office.

[x] The defendant shall continue under the terms and conditions of his present bond pending surrender to the institution.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____ with a certified copy of this judgment.

_____
UNITED STATESMARSHAL

By

_____
Deputy U S Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of one year.
The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.
The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:
The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

[x] The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable)

[x] The defendant shall not possess a firearm as defined in 18 U.S.C.§ 921. (Check, if applicable)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).
[x] The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the Court or probation officer;
2) the defendant shah report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or ether acceptable reasons;
6) the defendant shall notify the probation officer ten days prior to any change m residence or employment;
7) the defendant shall refrain from excessive use of alcohol;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person

convicted of a felony unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a taw enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement;

ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

[x] The defendant shall provide the probation officer access to any requested financial information.
[x] The defendant shall pay the remaining balance of the fine, if any, during the term of supervised release.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5. Part B.

	Assessment	Fine	Restitution
Totals:	$50.00	$10.000.00	$-0-

[ ] if applicable, restitution amount ordered pursuant to plea agreement .....$
[x] Payments are to commence during the period of confinement through R.O.P. Inmate Financial Responsibility Program in an amount determined to be appropriate.

FINE

It is further ordered that the defendant shall pay to the U.S. District Court, 201 Superior Avenue NE, Room #102, Cleveland, Ohio, 44114 a fine in the amount of $10,000.00.

RESTITUTION

[ ] The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case will be entered after such determination.

[ ] The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

Name of Payee Amount
**Total Amount of Loss
Amount of Restitution Ordered
Priority Order or Percentage of Payment

Totals: $0.00 $0.00

**Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994 but before April 23, 1996.

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal, (4) cost of prosecution, (5) interest, (6) penalties.

Payment of total fine and other criminal monetary penalties shall be due as follows:

A [x] $50.00 special assessment is due in full immediately.

B $ immediately, balance due (in accordance with C, D, or E); or

C [x] A fine in the amount of $10,000.00 shall be paid during the defendant's term of incarceration. The defendant shall make payments from any wages earn in prison in accordance with the Bureau of Prisons Financial Responsibility Program. Any portion of the fine that is not paid in full at the time of the defendant's release from imprisonment shall become a condition of supervised released.
D in installments to commence _____ day(s) after the date of this judgment. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or
E in _____ *(e.g. equal, weekly, monthly, quarterly)* installments of ____$
Over a period of _____ year(s) to commence _____ day(s) after the date of this judgment.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

PAYMENTS IS TO BE MAID PAYABLE TO THE CLERK, U.S. DISTRICT COURT.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Bureau of Prison's Inmate Financial Responsibility Program, are to be made as directed by the Court, the probation officer, or the United States Attorney.

STATEMENT OF REASONS

[] The Court adopts the factual findings and guideline application in the presentence report.

OR

[x] The Court adopts the factual findings and guideline application in the presentence report except:
Two points were added to the calculations for obstruction of justice; no points were deducted for acceptance of responsibility. After those revisions were made, the total offense level was a 16.

Guideline Range Determined by the Court:
Total Offense Level: 16
Criminal History Category: 3
Imprisonment Range: 27 to 33 months.
Supervised Release Range: 1 year.
Fine Range: $5,000.00 to $50,000.00

[ ] The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines

OR

[x] The sentence is within the guideline, range, that range exceeds 24 months, and the sentence is imposed for the following reason(s): The defendant was sentenced within the appropriate guideline range of 27 to 33 months.

OR

[] The sentence departs from the guideline range:
[] upon motion of the government, as a result of defendant's substantial assistance.
[] for the following specific reason(s):

APPENDIX C

USDC ORDER DENYING MOTION TO WITHDRAW GUILTY PLEA DATED 4-5-01

Denied. Lesley Wells. 4/5/01.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION
CASE NO. 1:00 CR 076

UNITED STATES OF AMERICA,
Plaintiff,

-VS-

NABIL N. GHALI,
Defendant

JUDGE LESLEY WELLS

DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA

Now comes the Defendant, Dr. Nabil Ghali, by and through his attorney, John Kennedy Lynch, and moves to withdraw his guilty plea filed in this case for the reasons that the prosecutor breached the terms of the Plea Agreement which was filed and, therefore, Defendant wishes to withdraw his plea of guilty to Count 3 of the Indictment. Attached hereto is a brief in support of this Motion.

WHEREFORE, it is requested that this motion be granted.

Respectfully submitted,

/SS/_____.

JOHN KENNEDY LYNCH (0001355)
Lynch & Lynch Co., L.P.A.
410 Leader Building
526 Superior Avenue
Cleveland, OH 44114-1984
(216) 771-2545
Attorney for Defendant
Nabil N. Ghali

APPENDIX D

DOCKET SHEETS
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

U.S. District Court
Northern District of Ohio (Cleveland)
CRIMINAL DOCKET FOR CASE #: 00-CR-76-ALL
USA v. Ghali
Filed: 02/23/00
Dkt# in other court: None
Case Assigned to: Judge Lesley Brooks Wells

NABIL N GHALI (1)
defendant

John Kennedy Lynch, III, Esq.
526 Superior Avenue
Ste. 410
Cleveland, OH 44114
Nabil N Ghali
[term 03/09/01]
1620 East 79th Street
Cleveland, OH 44103

Pending Counts:
26:7206(1) FALSE INCOME TAX RETURNS
Disposition
COMMITTED TO THE CUSTODY OF BOP FOR A TERM OF 27 MONTHS; SUPERVISED RELEASE FOR A TERM OF 12 MONTHS WITH SPECIAL CONDITIONS; SPECIAL ASSESSMENT OF $50.; FINE OF $10,000.
Offense Level (opening): 4
Terminated Counts:
26:7206(1) FALSE INCOME TAX RETURNS
Disposition:
UPON MOTION OF THE U.S. COUNTS 1, 3 AND 4 ARE DISMISSED
26:7206(1) FALSE INCOME TAX RETURNS
UPON MOTION OF THE U.S. COUNTS 1, 3 AND 4 ARE DISMISSED
Offense Level (disposition): 4
Complaints:
NONE
U. S. Attorneys:

John D. Sammon, Esq.
216-622-3829
[COR LD NTC]
Office Of The U.S. Attorney
1800 Bank One Center
600 Superior Avenue, E
Cleveland, OH 44114-2600
216-622-3600
FTS 522-4982

DOCKET PROCEEDINGS

DATE	#	DOCKET ENTRY
2/23/00	1	INDICTMENT by USA Counts filed against Nabil N Ghali (1) count(s) 1-4 (4 pgs) (ej) [Entry date 02/24/00]
2/23/00	--	ASSIGNMENT OF MAGISTRATE JUDGE to Mag. Judge Nancy A. Vecchiarelli pursuant to Local Rule 57.9 assignment of cases. In the event of referral, this case will be referred to the Magistrate Judge noted. (pgs: 1) (ej) [Entry date 02/24/00]
2/24/00	2	NOTICE of hearing ; arraignment set for 9:30 3/7/00 for Nabil N Ghali as to Nabil N Ghali in room 430, before Mag. Vecchiarelli (issued on 2/24/00) 1 pg(s) (ma) [Entry date 02/24/00]
3/7/00	3	MINUTES before Mag. Judge Nancy A. Vecchiarelli; dft Nabil N Ghali arraigned; not guilty plea entered; Atty John Lynch present; dft waived reading of indictment; Bond set to $20,000 unsecured, p.t. svcs suprvsn, travel restricted for Nabil N Ghali; dft is required to immediately obtain passport from Ct Common Pleas and turn it into the Clk of Cts, NDOH; dft shall not obtain a new passport. Court reporter:

Julie Knabe (issd 3/7/00) (1 pg) (ma) [Entry date 03/07/00] [Edit date 03/16/01]

3/7/00 4 APPEARANCE BOND Posted ($20,000 unsecured w/p.t.svc suprvsn) by Nabil N Ghali (1 pgs) (ma) [Entry date 03/07/00]

3/7/00 5 ORDER setting conditions of release for Nabil N Ghali by Mag. Judge Nancy A. Vecchiarelli (10 pgs) (ma) [Entry date 03/07/00]

3/10/00 6 NOTICE of status hrg set for 2:30 p.m. 3/30/00 for Nabil N Ghali in room 337, before Hon. Lesley Wells. (issd) 1 pg (kv) [Entry date 03/10/00]

3/10/00 7 CRIMINAL TRIAL ORDER by Judge Lesley B. Wells. Jury trial set for 9:30 a.m. on 5/9/00 & final pretrial for 11:00 a.m. on 4/27/00. (issd) 4 pg(s) (kv) [Entry date 03/13/00]

3/30/00 8 CRIMINAL MINUTES before Judge Lesley B. Wells of status hrg held 3/30/00 as to Nabil N Ghali. Court Reporter: none. (1 pg) (kv) [Entry date 03/31/00]

4/3/00 9 MOTION by deft for 90 day continuance of trial. (2 pgs) (kv) [Entry date 04/04/00]

4/7/00 10 CONTINUANCE ORDER per 18:3161 by Judge Lesley B. Wells granting mot by deft for 90 day continuance of trial [9-1]. Jury trial set for 9:30 a.m. on 8/8/00 & final pretrial conf set for 10:30 a.m. on 8/1/00. (2 pgs) (kv) [Entry date 04/10/00]

7/6/00 11 MOTION by deft for continuance of 8/8/00 trial. (3 pgs) (kv) [Entry date 07/07/00]

7/12/00 12 ORDER GRANTING MOTION FOR CONTINUANCE per 18:3161 of trial by Judge Lesley B. Wells [11-1]. Jury trial cont to 11:30 a.m. on 10/16/00 & final pretrial cont to 9:30 a.m. on 10/23/00. (2 pgs) (kv) [Entry date 07/13/00]

10/10/00 13 CONSENT TO ORDER OF REFERRAL TO MAGISTRATE JUDGE before Mag. Judge Nancy A. Vecchiarelli for purposes of receiving deft's plea of guilty. (1 pg) (kv) [Entry date 10/11/00]

10/16/00 14 MINUTES before Mag. Judge Nancy A. Vecchiarelli guilty plea entered by Nabil N Ghali; atty Jim Lynch present; dft consents to Mag. Judge for taking plea; dft plead guilty to cnt 2 of indict; ct recommends acceptance of guilty plea. Court reporter: Julie Knabe (issued on 10/16/00) 1 pg(s) (ma) [Entry date 10/16/00]

10/16/00 15 REPORT AND RECOMMENDATION that the plea of guilty be accpeted and a finding of guilty be entered by the Ct. by Mag. Judge Nancy A. Vecchiarelli (3 pgs) (ma) [Entry date 10/16/00]

11/14/00 16 ORDER by Judge Lesley B. Wells accepting plea agreement and judgment as to count two [15-1]. Deft adjudged guilty fo count two. Sentencing will be 9:30 a.m. on 1/19/01. (issd) 2 pgs (kv) [Entry date 11/15/00]

11/14/00 19 PLEA Agreement as to Nabil N Ghali by Judge Lesley B. Wells (5 pgs) (kv) [Entry date 02/07/01]

1/8/01 17 MOTION by deft for continuance of sentencing date. (2 pgs) (kv) [Entry date 01/09/01]

1/10/01 -- MARGINAL ENTRY order granting mot by deft for continuance of sentencing date [17-1]. (issd 1/10/01) Judge Lesley B. Wells (kv) [Entry date 01/11/01]

2/2/01 18 NOTICE of sentencing hearing set for 2:30 p.m. on 2/21/01 for Nabil N Ghali in room 342, before Judge Lesley Wells (issued) 1 pg(s) (dh) [Entry date 02/02/01]

2/14/01 20 PRE-SENTENCE memorandum as to Nabil N Ghali (one notebook incl exhs) (kv) [Entry date 02/14/01]

2/16/01 21 EXHIBIT index for sentencing by USA (18 pgs) (kv) [Entry date 02/16/01]

2/22/01 22 NOTICE of sentencing set for 10:00 a.m. on 3/8/01 for Nabil N Ghali in room 342, before Hon. Lesley Wells (issd) 1 pg (kv) [Entry date 02/22/01]

3/2/01 23 SENTENCING memorandum by USA as to Nabil N Ghali (7 pgs) (kv) [Entry date 03/02/01]

3/6/01 24 PRE-SENTENCE memorandum by deft Nabil N Ghali (17 pgs) (kv) [Entry date 03/07/01]

3/8/01 25 SUPPLEMENT/AMENDMENTS by deft Nabil N Ghali to memorandum dated 2/14/01. [20-1] (54 pgs) (jam) [Entry date 03/09/01]

3/8/01 26 MINUTES: before Judge Lesley B. Wells; sentencing held on 3/8/01 as to dft Nabil N Ghali; Dft is committed to the custody of the BOP for a term of 27 months as to Count 2 w/1 year supervised release to follow, dft is to pay a fine of $10,000.00, dft is to pay an S/A of $50.00, Cnts 1, 3 & 4 of the indictment

are dism upon oral mot of the U.S. Atty, drug testing is suspended, appeal rights given to dft. J&C to follow. Court reporter: Bruce Matthews (2 pgs+ 1 pg exh & witness list) (bb) [Entry date 03/09/01] [Edit date 03/16/01]

3/9/01 28 JUDGMENT and Commitment issued to U.S. Marshal: Sentencing Nabil N Ghali (1) on cnt 2. COMMITTED TO THE CUSTODY OF BOP FOR A TERM OF 27 MONTHS; SUPERVISED RELEASE FOR A TERM OF 12 MONTHS WITH SPECIAL CONDITIONS; SPECIAL ASSESSMENT OF $50.; FINE OF $10,000. UPON MOT OF THE U.S. CNTS 1, 3 & 4 ARE DISMISSED. Judge Lesley B. Wells (7 pgs) (ej) [Entry date 03/16/01] [Edit date 03/16/01]

3/13/01 27 MOTION by deft Nabil N. Ghali to continue bond pending appeal. (2 pgs + 4 exh pgs) (bb) [Entry date 03/14/01]

3/15/01 29 NOTICE of Appeal by dft re: Judgment & Commitment order [28-5] (cc: all counsel-notice only. USCA-notice and doc(s) mailed on 3/16/01) FEE PAID 3/23/01 (2 pgs) (shh) [Entry date 03/16/01] [Edit date 03/26/01]

3/15/01 30 TRANSCRIPT of sentencing hrg before Judge Lesley B. Wells for the following date: 3/8/01; C/R: Bruce Matthews (Re: [29-1]) (175 pgs) (shh) [Entry date 03/20/01]

3/22/01 31 ACKNOWLEDGMENT from USCA for the 6th Circuit of receipt of Notice of Appeal (USCA #: 01-3282) - dt rcvd 3/19/01; dt filed 3/20/01 (1 pg) (shh) [Entry date 03/23/01]

3/23/01 32 NON-APPEAL TRANSCRIPT ORDER held on 3/8/01 before Judge Lesley B. Wells by court reporter Bruce Matthews; Requested By: John D. Sammon (1 pg) (shh) [Entry date 03/26/01]

3/23/01 33 RESPONSE by USA to mot by dft to continue bond pending appeal [27-1] (4 pgs) (shh) [Entry date 03/26/01]

3/23/01 34 RECEIVED Appeal fee in the amount of $105.00 (Receipt # 624331) (1 pg) (shh) [Entry date 03/26/01]

3/26/01 35 MOTION by dft to withdraw guilty plea (7 pgs) (rs) [Entry date 03/27/01]

3/26/01 36 TRANSCRIPT Order Form by dft received. Transcript of 3/8/01 sentencing hrg is nec for appeal purposes. (1 pg) (shh) [Entry date 03/28/01]

3/27/01 -- MARGINAL ENTRY denying motion by deft Nabil N. Ghali to continue bond pending appeal. [27-1] (issued on 3/27/01) Judge Lesley B. Wells (vk) [Entry date 03/27/01]

4/4/01 37 RESPONSE by USA to motion by dft to withdraw guilty plea [35-1] (11 pgs) (ej) [Entry date 04/04/01]

4/5/01 -- MARGINAL ENTRY denying motion by dft to withdraw guilty plea [35-1] (issued) Judge Lesley B. Wells (pl) [Entry date 04/09/01]

4/11/01 -- CERTIFIED original pldgs mailed to the 6th Circuit on 4/11/01 (2 vols pldgs & 1 vol trans) (shh) [Entry date 04/11/01]

4/23/01 38 APPEAL ORDER: Denying dft's motion for release on bond pending appeal (USCA# 01-3282). Clerk: L. Green; dt issd 4/19/01 (2 pgs) (shh) [Entry date 04/25/01]

4/26/01 39 ACKNOWLEDGMENT from USCA for the 6th Circuit of receipt of certified record - dt rcvd 4/12/01 dt filed 4/13/01 (1 pg) (kv) [Entry date 04/26/01]

5/30/01 40 JUDGMENT and Commitment returned executed on 4/20/01 dft surrendered to FCI McKean as to Nabil N Ghali (1) count 2 (kv) [Entry date 05/30/01]

9/12/02 41 INFORMATION COPY of opinion from USCA: Affirming the judgment of the District Court (USCA# 01-3282). This is not a mandate order. Clerk: L. Green; Circuit Judges: Norris and Batchelder; District Judge: Forester. Dt issd 9/10/02 (5 pgs) (shh) [Entry date 09/12/02]

10/4/02 42 TRUE COPY of order from USCA - Affirming the jgm of the District Court [29-1] (USCA# 01-3282). Clerk: L. Green; dt issd as mandate 10/2/02; Cost: None (1 pg) (shh) [Entry date 10/08/02]

END OF DOCKET: 1:00cr76-0

APPENDIX E

DOCKET SHEETS
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

General Docket
US Court of Appeals for the Sixth Circuit
Court of Appeals Docket #: 01-3282
Filed: 3/20/01
Nsuit: 0
USA v. Ghali
Appeal from: Northern District of Ohio at Cleveland

Case type information:
1) criminal
2) Sen & Cnv Appeal--after 10/87
3)

Lower court information:
District: 0647-1 : 00-00076
Trial Judge: Lesley Brooks Wells, U.S. District Judge
Court Reporter: Julie Knabe
Court Reporter: Bruce Matthews
Date Filed: 2/23/00
Date order/judgment: 3/16/01
Date NOA filed: 3/15/01

Fee status: paid

Prior cases:
None
Current cases:
None
Docket as of October 8, 2002 9:10 pm Page 1

01-3282 USA v. Ghali

UNITED STATES OF AMERICA John D. Sammon
Plaintiff - Appellee FTS 522-8354
216-622-3829
[COR LD NTC gvt]
U.S. Attorney's Office

600 Superior Avenue, E.
Suite 1800 Bank One Center
Cleveland, OH 44114-2600

v.

NABIL N. GHALI
Defendant - Appellant

John Kennedy Lynch
FTS 771-2421
216-771-2545
[COR LD NTC ret]
Lynch & Lynch
526 Superior Avenue
Suite 410 Leader Building
Cleveland, OH 44114-1984

01-3282 USA v. Ghali
UNITED STATES OF AMERICA
Plaintiff - Appellee
v.
NABIL N. GHALI
Defendant - Appellant

01-3282 USA v. Ghali

3/20/01 Criminal Case Docketed. Notice filed by Appellant Nabil N. Ghali. Transcript needed: y. □ (tmb)

3/26/01 APPEARANCE filed by Attorney John D. Sammon for Appellee USA [01-3282] (tmb)

3/26/01 APPEARANCE filed by Attorney John Kennedy Lynch for Appellant Nabil N. Ghali [01-3282] (tmb)

3/26/01 TRANSCRIPT ORDER FORM filed by John Kennedy Lynch for Appellant Nabil N. Ghali: Transcript on file in district court. [01-3282] [2329134-1] (blh)

3/30/01 BRIEFING LETTER SENT setting briefing schedule: appellant brief due 5/9/01 ; appellee brief due 6/8/01 ; appendix due 6/29/01 ; final appellant brief due 7/20/01 . [01-3282] final appellee brief due 7/20/01 ; . (tmb)

4/3/01 Record requested from district court.Letter from John K. Lynch (March 29, 2001) (dac)

4/6/01 Appellant MOTION filed for continuance of bond pending appeal (scheduled to report April 20, 2001). [2335365-1] . Motion filed by John Kennedy Lynch for Appellant Nabil N. Ghali. Certificate of service date 4/5/01 [01-3282] (tmb)

4/13/01 CERTIFIED RECORD filed . Volumes include 1 Tr; 2 Pl. [01-3282] (dac)

4/16/01 Appellee RESPONSE in opposition filed regarding a motion for continuation of bond pending appeal [2335365-1] ; previously filed by John Kennedy Lynch . Response from John D. Sammon for Appellee USA. Certificate of service date 4/11/01 [01-3282] (tmb)

4/19/01 ORDER filed denying motion for release on bond pending appeal [2335365-1] filed by John Kennedy Lynch [01-3282] . Entered by order of the court. (tmb)

4/19/01 LETTER SENT TO district court by tmb sending a certified copy of order filed 4/19/01 . [01-3282] (tmb)

4/23/01 Appellant MOTION filed to reconsider order dated 4/19/01 . Motion filed by John Kennedy Lynch for Appellant Nabil N. Ghali. Certificate of service date 4/19/01 [01-3282] (tmb)

5/3/01 ORDER filed denying motion to reconsider order [2343276-1] filed by John Kennedy Lynch [01-3282] . Cornelia G. Kennedy, Circuit Judge, Martha C. Daughtrey, Circuit Judge, David W. McKeague, District Judge. (tmb)

5/7/01 PROOF BRIEF filed by John Kennedy Lynch for Appellant Nabil N. Ghali. Certificate of service date 5/7/01. Number of Pages: 15. [01-3282] □ (vf)

01-3282 USA v. Ghali

5/7/01 Request to require oral argument filed by John Kennedy Lynch for Appellant Nabil N. Ghali [01-3282] (vf)

6/11/01 PROOF BRIEF filed by John D. Sammon for Appellee USA. Certificate of service date 6/7/01 . Number of Pages: 18. [01-3282] □ (vf)

6/11/01 Request to waive oral argument and submit case on the briefs, (waiver on page: iv), filed by John D. Sammon for Appellee USA [01-3282] However, if this Court grants the defendant-appellant's request for oral argument, the United States certainly desires to participate in it. (vf)

6/22/01 REPLY BRIEF filed by John Kennedy Lynch for Appellant Nabil N. Ghali. Copies: 1. Certificate of service date 6/20/01. [01-3282] (vf)

6/27/01 APPENDIX filed by John Kennedy Lynch for Appellant. Copies: 5 (Vol 1-3)(PSI included). Certificate of service date 6/27/01 [01-3282] (vf)

6/27/01 Corrected appendix filed by John Kennedy Lynch. Copies: 5 (PSI). Certificate of Service date 6/27/01 [01-3282] (vf)

7/6/01 FINAL BRIEF filed by John D. Sammon for Appellee USA. Copies: 7. Certificate of service date 7/3/01 . Number of Pages: 18. [01-3282] (vf)

7/6/01 Request to waive oral argument and submit case on the briefs, (waiver on page: iv), filed by John D. Sammon for Appellee USA [01-3282] However, if this Court grants the defendant-appellant's request for oral argument, the United States certainly desires to participate in it. (vf)

7/13/01 Appellant MOTION filed for leave to correct the joint appendix. Motion filed by John Kennedy Lynch for Appellant Nabil N. Ghali. Certificate of service date 7/11/01 [01-3282] (tmb)

7/13/01 LETTER SENT by tmb granting motion to correct appendix [2390276-1] filed by John Kennedy Lynch [01-3282] resetting briefing schedule: [01-3282] CORRECTED appendix now due 7/27/01 ; appellant final brief now due 8/17/01 ; (tmb)

9/4/01 FINAL BRIEF filed by John Kennedy Lynch for Appellant Nabil N. Ghali. Copies: 7. Certificate of service date 8/31/01. Number of Pages: 15. [01-3282] (vf)

9/4/01 Request to require oral argument filed by John Kennedy Lynch for Appellant Nabil N. Ghali [01-3282] (vf)

01-3282 USA v. Ghali

9/4/01 FINAL REPLY BRIEF filed by John Kennedy Lynch for Appellant Nabil N. Ghali. Copies: 7 Certificate of service date 8/31/01. Number of Pages: 4. [01-3282] (vf)

3/25/02 Oral argument date set for June 18, 2002 in court room 607. Notice of argument sent to counsel. [01-3282] (rld)

6/18/02 CAUSE ARGUED on 6/18/02 by John Kennedy Lynch for Appellant Nabil N. Ghali, John D. Sammon for Appellee USA before Judges Norris, Batchelder, Forester. [01-3282] (me)

6/27/02 Appellant MOTION filed for release on bond or commitment to house arrest pending decision on appeal. [2575872-1] . Motion filed by John Kennedy Lynch for Appellant Nabil N. Ghali. Certificate of service date 6/25/02 [01-3282] (tmb)

8/1/02 RULING denying motion for release on bond pending appeal (LG/bb per hearing panel, 7/31/02; counsel notified by mail on 8/1/02) [01-3282] . (bb)

9/10/02 Per Curiam OPINION filed : AFFIRMED; decision not for publication pursuant to local rule 28(g) [01-3282] . Alan E. Norris, Circuit Judge, Alice M. Batchelder, Circuit Judge, Karl S. Forester, District Judge. (tmb)

10/2/02 MANDATE ISSUED with no cost taxed [01-3282] (pb)

10/8/02 CERTIFIED RECORD RETURNED to lower court at the end of appellate proceedings. [01-3282] . Volumes included: 2 Pl; 1 Tr;. (dac)